

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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PATRICIA DeSANTIS,
individually, and as Successor
in Interest for RICHARD
DeSANTIS, deceased, and as
Guardian Ad Litem for DANI
DeSANTIS, a minor,

Plaintiffs,

vs.

No. C-07 3386 JSW

CITY OF SANTA ROSA, JERRY
SOARES, RICH CELLI, TRAVIS
MENKE, PATRICIA MANN, and DOES
1 through 25, inclusive,

Defendants.

DEPOSITION OF RICHARD CELLI

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REPORTED BY: A. MAGGI SAUNDERS,

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1 session of your deposition, you mentioned that in, I
2 believe February of 2007, you were involved in another
3 shooting, correct?

4 A. Yes.

5 Q. Okay. And we were going to delay until a
6 later time, and that is right now, asking questions
7 about that other shooting.

8 Now, my understanding is that the District
9 Attorney has also announced that it's not prosecuting
10 you or anyone else relating to that the shooting,
11 correct?

12 A. Correct.

13 Q. And, to your knowledge, did the Santa Rosa
14 Police Department do an independent review of that
15 shooting --

16 A. Correct.

17 Q. -- other than relying on the District
18 Attorney and the Sheriff's Department?

19 A. I don't know.

20 Q. Okay. And in that shooting incident do
21 you know how many Officers fired weapons?

22 A. Four.

23 Q. And you were one of those four?

24 A. Yes.

25 Q. Okay. And who were the other three

1 Santa Rosa Police Department, have you received any
2 training in conducting 5150 Detentions?

3 A. I learned about them in Field Training,
4 obviously.

5 And aside from -- I would say, constant
6 contacts with 5150-related incidents, or suspected
7 related incidents, which are a daily occurrence.

8 I would call that essentially on-the-job
9 training, but it looks like you've got listed here on
10 page four of seven, EDP Training.

11 Q. Yeah, the Emotionally Disturbed Persons,
12 does that training relate to 5150 situations, or
13 something else?

14 A. Emotionally Disturbed Person, it could be
15 5150; it could be persons who are Under the Influence.
16 A multitude of things.

17 Q. Okay. So, it could be someone who,
18 because of a mental disorder such as psychosis, or they
19 are delusional because of, they are just born that way;
20 or it could be someone -- people who are acting
21 psychotically or delusionally, because of alcohol or
22 drugs.

23 A. A multitude of things, correct.

24 Q. And so, you've had training dealing with
25 "Emotionally Disturbed Persons"?

1 A. Yes.

2 Q. And is that from a point of view of
3 defensive tactics, and things of that nature, or just
4 in terms of doing some kind of assessment, and placing
5 them under a 5150, or a little of both?

6 A. Defensive tactics, I don't believe were
7 involved in any of that training. It was on persons.

8 But since we're speaking of "defensive
9 tactics," routinely, during defensive tactics
10 training, or a lot of trainings, even firearms
11 training, we bring up situations where people are not
12 responding, acting appropriately, emotionally
13 disturbed. That's routine.

14 Q. Okay. And do you recall anything about
15 this training for "Emotionally Disturbed Persons" you
16 received in May of 2002?

17 MS. FOWLER: Other than what he's already
18 told you.

19 MR. SCOTT: Q. Yes.

20 A. I just remember one part of the training
21 was, you know, dealing with a - a subject arming
22 themselves with a knife, threatening to stab
23 themselves, and you had to speak to them to try to
24 diffuse the situation, both as individuals and as in
25 pairs.

1 Q. Okay. And how about his wife Patricia
2 DeSantis, had you heard of her?

3 A. Not that I'm aware of.

4 Q. Okay. Do you recall the call you first
5 received regarding Mr. DeSantis?

6 A. Generally.

7 Q. Okay. Do you remember if that call
8 relayed an address?

9 A. I'm sure it did, but I couldn't even tell
10 you the name of the address at this time.

11 Q. Okay. The information that you first
12 received regarding this incident involving Mr.
13 DeSantis, can you summarize for me what you understood
14 that information to be?

15 A. That the wife of Mr. DeSantis was
16 reporting that he was shooting a weapon inside the
17 residence, and that there were two children inside the
18 residence, ten years old and two.

19 I was dispatched, along with two other
20 Officers, I was dispatched from the Station.

21 Q. At the time did you have any information
22 that Mr. DeSantis had been shooting his weapon at any
23 person in the residence?

24 A. Not that I was aware of.

25 Q. Okay. To your knowledge, did you have an

DEPOSITION OF RICHARD C. CELLER
1 A. I have no idea of the number.

2 Q. Do you have a sense of whether it was more
3 than five?

4 A. Back and forth, it was probably around
5 there, somewhere around five.

6 Q. Okay. And at the time, by the time that
7 you arrived at the DeSantis residence, do you recall
8 whether you had had any updates pertaining to gunshots
9 in the residence?

10 A. Yes.

11 Q. And what -- can you describe what those
12 updates relayed?

13 A. The first one, before the report of
14 gunshots, was the identification of a Glock pistol that
15 he was shooting.

16 Shortly thereafter, I learned that the
17 first officers had arrived on-scene.

18 And then, immediately after, I was advised
19 that there were more shots from the residence.

20 Q. Okay. Who advised you that there were
21 "more shots from the residence"?

22 A. Dispatch.

23 Q. And did Dispatch advise you on what basis
24 they had that information?

25 A. No; just the fact there were more shots

1 from the residence.

2 Q. Okay. Did Dispatch advise you that the
3 caller was still on the line?

4 A. Yes.

5 Q. Did you request any information from
6 Dispatch?

7 A. I requested that they tell the wife to
8 attempt to flee with the children.

9 Q. Did you inquire as to the status of --
10 Well, strike that.

11 About how long before you arrived at the
12 DeSantis residence, did you make that request to
13 Dispatch, about having the wife and kids attempt to
14 flee?

15 A. About a minute, I would say, estimate a
16 minute.

17 Q. Now, before you arrived at the scene, you
18 had come to an impression in your mind that this could
19 be a potential murder/suicide; is that right?

20 MS. FOWLER: I'm going to object. There
21 is lack of foundation. He hasn't testified to that.

22 THE WITNESS: There were numerous things
23 crossing my mind about what was going on.

24 MR. NISENBAUM: Q. Okay. Was that one of
25 those?

1 A. I believe my first thoughts were that this
2 may be a hostage scenario, based upon the fact that
3 Mrs. DeSantis, who was either unwilling, or unable, to
4 leave the residence prior to my arrival.

5 Q. How did you know that she was unable to
6 leave -- Well, strike that.

7 What made you think that she was either
8 unwilling or unable to leave the residence?

9 A. I had asked for an update from my original
10 request, to have her flee the residence.

11 And I don't know the terms that were
12 used, but essentially she advised that she either
13 wasn't or couldn't leave the residence.

14 Q. And did you make any further inquiries
15 about why she wasn't leaving the residence?

16 A. No. I didn't have time.

17 Q. Okay. Would it make a difference to you
18 as to whether she was unwilling to leave the residence,
19 as opposed to unable to leave the residence?

20 A. It could have a bearing, but not
21 necessarily. My interest was protection of everyone
22 involved.

23 Q. When you arrived at the DeSantis
24 residence, where did you park?

25 A. Southeast of the residence.

1 Q. You never -- Did you ever hear any officer
2 ask her any questions about the circumstance? And I
3 mean the circumstances that brought you to the scene.

4 A. There was no time there to do that.

5 Q. Well, from the time that you arrived, from
6 the time that you first saw Mr. DeSantis to the time
7 the shooting occurred, about how much time passed?

8 A. A minute, a minute and a half, total.

9 Q. Did you give any consideration to, during
10 that minute to a minute and a half time period, did you
11 give any consideration to bringing the police car
12 around to illuminate the driveway?

13 A. No.

14 Q. Why not?

15 A. I could see the scene at that point.

16 Q. So, at that point, was the scene fairly
17 well-lit?

18 A. It was not well-lit; however, I could see
19 Mr. DeSantis.

20 Q. And as I understand it, Mr. DeSantis was
21 topless?

22 A. No shirt, correct.

23 Q. And he was wearing jeans?

24 A. Yes.

25 Q. Did you feel that you could -- that the

1 Did you give any consideration at that
2 point to attempt to get greater visibility through the
3 use of better lighting upon Mr. DeSantis?

4 A. No. We were directed at trying, or more
5 focused at trying to get compliance from Mr. DeSantis
6 at that point.

7 Q. Now, it was important to you to know
8 whether or not Mr. DeSantis was still armed, correct?

9 A. Yes.

10 Q. Did you ask him whether he was still
11 armed?

12 A. We didn't get that far.

13 Q. All right. So you did not ask him that
14 question?

15 A. Correct.

16 Q. And you never asked Mrs. DeSantis whether
17 he was still armed, correct?

18 A. Correct.

19 Q. Okay. Is there a reason you did not ask
20 Mrs. DeSantis whether her husband was still armed?

21 A. I was focused on Mr. DeSantis at the time.

22 Q. What was Mr. DeSantis doing at that time?

23 A. At which time?

24 Q. During the time period when you did not
25 ask Mrs. DeSantis whether or not her husband was still

1 correct?

2 A. I just couldn't tell.

3 Q. Okay. If -- Did you see something in his
4 pants that you thought might be a bulge, but you
5 couldn't tell?

6 A. Not that I was aware of.

7 Q. Okay. Now, at some point Mr. DeSantis
8 kind of was more prone on the ground; is that correct?

9 A. Yes.

10 Q. Okay. And it's been described, I think as
11 being in a push-up position; is that correct?

12 A. Yes.

13 Q. Okay. And what you mean by that is his
14 hands were kind of by his chest, and his body was
15 extended?

16 A. Briefly.

17 Q. Okay. At that time, were you able to see
18 Mr. DeSantis' back at all?

19 A. No.

20 Q. Okay. And was there an obstruction in
21 your vision?

22 A. It was just the way that he went down, and
23 then he immediately bowed up.

24 Q. Were you able to see his back pockets at
25 all?

1 A. No.

2 Q. Okay. So when he was down in a push-up
3 position, you were never able to see his rear
4 waistband?

5 A. No.

6 Q. What direction was his head relative to
7 you?

8 A. Facing towards Officer Menke; so, it would
9 have been facing away from me, and about, maybe a
10 30-degree angle away from me.

11 Q. Okay. Officer Menke was to what side of
12 you?

13 A. The left.

14 Q. Okay. And Mr. DeSantis was -- his head
15 was -- was more aligned in Officer Menke's direction?

16 A. And body.

17 Q. Correct, his head and body were more
18 aligned in Officer Menke's direction?

19 A. Yes.

20 Q. Is it fair to say that you had a better
21 view of Mr. DeSantis', the right side of Mr. DeSantis'
22 body when he was in that somewhat prone push-up
23 position than the left side?

24 A. No, the left more than the right.

25 Q. I see. I see.

1 Bushmaster?

2 A. A second or two.

3 Q. Now, Mr. DeSantis reacted to the Sage,
4 correct?

5 A. Yes.

6 Q. And it slowed him down?

7 A. It tilted him right; I guess, slowed him
8 down momentarily.

9 Q. Okay. Now, at the time that the Sage hit
10 Mr. DeSantis, how far was he from the officers he was
11 running at?

12 A. Maybe 12 yards.

13 Q. Okay. Now, you've been trained that --
14 you've had training that a person can, of course,
15 approach officers, correct, that that's possible?

16 MS. FOWLER: Well, I'm going to object.
17 That's a vague, ambiguous and overly-broad question.

18 MR. NISENBAUM: Q. Well, let me put it
19 this way:

20 It's within your understanding that a
21 person may start out further than, let's say, 45 feet
22 from an Officer, but can, of course, come closer to the
23 Officer, correct?

24 A. In what circumstances?

25 Q. A circumstance where there is not an

1 MR. NISENBAUM: Q. I'll ask, from you
2 first.

3 A. No, I think he was too far away.

4 Q. Okay. How far -- He was about 12 yards
5 away when you shot him --

6 A. Yes.

7 Q. -- he was 12 yards from you, or from
8 Officer Menke?

9 A. From Officer Menke; so, probably about the
10 same distance from me.

11 Q. Okay. And the Taser, the Taser that you
12 have in your trunk would be effective as a range of
13 further than 12 yards, correct?

14 MS. FOWLER: Well, is your question,
15 effective, or have a range? I mean, that's two
16 different questions.

17 MR. NISENBAUM: Q. Have a range.

18 A. It has a range of about 21 feet.

19 Q. So that's 7 yards?

20 A. Yes. Effective range of 21 feet.

21 Q. Does it have a further range than that?

22 A. Not effectively. So, it doesn't have --

23 The probes on the Taser, they are
24 designed to separate, so the further separation is
25 created by further distance.

1 it, you had no information from Mr. DeSantis' wife
2 until after the shots were fired as to why she had
3 called -- and I mean directly from Mr. DeSantis' wife,
4 as to why she had called the police, correct?

5 A. Correct.

6 Q. Your only information had come through
7 Dispatch?

8 A. Correct.

9 Q. Okay. Did you have any conversation with
10 Officers at the scene about any information -- and I
11 mean prior to the firing -- from the time you arrive at
12 the scene, up to the point when shots are fired, about
13 any information they had learned while they were at the
14 scene?

15 A. No.

16 Q. And is the reason for that, the same, that
17 there was not time?

18 MS. FOWLER: Well, I was going to object:
19 It assumes facts not in evidence, that any other
20 Officer spoke to her before he got there.

21 THE WITNESS: It's my belief at the time
22 we were approaching the residence, that this was
23 possibly an active shooter situation, with ongoing
24 firing.

25 MR. NISENBAUM: Q. And the "active

1 shooter" was obviously in your vision when -- once you
2 observed Mr. DeSantis, correct?

3 A. Once we got to the location, I saw Mr.
4 DeSantis, yes.

5 Q. Now, you fired your weapon one time,
6 correct?

7 A. Yes.

8 Q. Do you know who fired the first round?

9 A. From a firearm?

10 Q. From any firearm at the scene, aside from
11 the earlier shots fired by Mr. DeSantis allegedly?

12 MS. FOWLER: And not counting the Sage, or
13 are you including the Sage, and --

14 MR. NISENBAUM: Q. Not counting the Sage.

15 A. I was the first Officer to fire a firearm.

16 Q. Okay. How do you know that?

17 A. I shot -- heard my shot.

18 Q. At the time you fired, Mr. DeSantis had
19 never reached behind his back, that you could observe;
20 is that correct?

21 A. Correct.

22 Q. Your only information that Mr. DeSantis
23 presented a lethal threat at the time you fired was the
24 information you had received from Dispatch, that he had
25 been shooting into the residence; is that correct?

1 MS. FOWLER: I'm going to object. That's
2 argumentative.

3 Go ahead, you can answer the question.

4 THE WITNESS: Could you repeat the
5 question?

6 MR. NISENBAUM: Q. Your only information
7 at the time that you fired your firearm at Mr.
8 DeSantis, your only information that Mr. DeSantis
9 presented a lethal threat was information you received
10 from Dispatch about regarding Mr. DeSantis' alleged
11 behavior while in the house, correct?

12 A. And then the actions that he was
13 displaying.

14 Q. Well, the actions that he was displaying,
15 he never displayed a weapon, correct?

16 A. Correct.

17 Q. Okay. So, what other lethal threat did
18 you understand him to be at the time that you fired?

19 A. He's attacking the Officer.

20 Q. Attacking them physically?

21 A. Yes.

22 Q. Okay. Now, Officers are trained in how to
23 protect themselves; is that correct?

24 A. Yes.

25 Q. And they are trained that -- to your

1 knowledge, you've been trained that force is -- that
2 the use of force is to be based upon the threat
3 presented, correct?

4 A. Correct.

5 Q. Okay. And do you have any training --
6 Have you had any training that it's
7 appropriate to use lethal force on an unarmed person?

8 MS. FOWLER: Well, I'm going to object.
9 That's vague and ambiguous and an incomplete
10 hypothetical.

11 And if you can answer the question as
12 phrased, go ahead.

13 THE WITNESS: If the Officer is being
14 attacked, and they are in fear for their life, yes, or
15 the life of others.

16 MR. NISENBAUM: Q. The attack that's
17 presented, what kind of -- To your understanding, what
18 kind of attack is -- justifies lethal -- a lethal
19 force?

20 A. If I'm in fear for the Officers or my own
21 life or the lives of others, then, I am fearful that
22 that person, if I allow to continue that attack, will
23 harm or kill them, it's justified.

24 Q. Now, to your knowledge, with the officers
25 that Mr. DeSantis had ran towards, to your knowledge,

1 are they trained in the use of pepper spray?

2 A. Yes.

3 Q. And they are also trained in the use of
4 defensive tactics, correct?

5 A. Correct.

6 Q. The same training you've had?

7 A. Correct.

8 Q. Okay. And to your knowledge, an Officer
9 could have used pepper spray on Mr. DeSantis, correct?

10 A. If he or she had had the time or ability
11 to transition from a firearm to that other option.

12 Q. Okay. Do you know whether or not -- Let
13 me ask you this:

14 During the time period when Mr. DeSantis
15 got down on the ground initially, up to the -- and then
16 later went into this push-up position type of thing, so
17 from the point when he initially complied and got on
18 his knees, up to the point after the push-up position
19 of when you say that he started to charge at the
20 Officers, how much time did that encompass?

21 A. From the time he went from his knees to
22 the push-up position?

23 Q. From the time he went to his knees to the
24 point when he charged at the Officers.

25 A. Fifteen, 20 seconds.

1 could have ordered that the dog be sent, correct?

2 A. When he started to charge the Officer?

3 Q. When he stopped complying.

4 A. There was no time to give that order.

5 Q. Okay. At the point when the Sage was
6 used, a Taser could have been used, correct?

7 MS. FOWLER: I'm going to object. Calls
8 for speculation. Don't answer that.

9 MR. NISENBAUM: Q. I'm not asking --
10 I'm asking you, as a commander at the
11 scene: You could have given an order for a Taser to
12 be used, correct?

13 MS. FOWLER: You mean, did he have the
14 ability to order an Officer to do that?

15 MR. NISENBAUM: Q. Yes.

16 A. At the time I did not have the ability to
17 do that, based upon the time and distance of Mr.
18 DeSantis.

19 Q. Okay. It's fair to say that you never saw
20 any object consistent with a weapon on Mr. DeSantis'
21 person, correct?

22 MS. FOWLER: It's already been asked and
23 answered several times.

24 THE WITNESS: Correct.

25 MR. NISENBAUM: Q. No one ever re- -- No

STATE OF CALIFORNIA) ss.
)

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 22nd day of June, 2008.

A. Maggi Saunders CSR

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